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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,320	12/04/2001	Tracy J. Kimbrel	00280686AA	9757

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EXAMINER

BOUTAH, ALINA A

ART UNIT PAPER NUMBER

2143

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/000,320

Applicant(s)

KIMBREL ET AL.

Examiner

Alina N. Boutah

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 8-15.
Claim(s) objected to: _____.
Claim(s) rejected: 1-7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached Office Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This action is in response to Applicant's amendment filed December 13, 2005. Claims 1-15 are pending in the present application.

Claim Rejections - 35 USC § 112

Applicant's argument have been persuasive, therefore the 112 rejections from the previous Office action are now withdrawn.

Claim Rejections - 35 USC § 101

Applicant's argument have been persuasive, therefore the 101 rejections from the previous Office action are now withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,216,593 issued to Dietrich et al. (hereinafter referred to as Dietrich) in view of US 2003/0037146 to O'Neill.

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Regarding claim 1, Dietrich teaches a method of resource allocation to yield a benefit comprising the steps of:

generating an input matrix of demands of customer demands for resources of resources indexed by customers and time periods where a benefit function is known in advance (figure 2 steps 30-34; col. 2, lines 17-34); and

producing from the input matrix an output matrix of allocations of resources to customers to realize a benefit (figure 4; col. 2, lines 17-34).

However, Dietrich fails to explicitly teach reallocating a resource from a first customer to a second customer makes that resource unavailable to the first customer during a time interval that the resource is allocated to the second customer. O'Neill teaches reallocating a resource from a first customer to a second customer makes that resource unavailable to the first customer during a time interval that the resource is allocated to the second customer (figures 6 and 7; 0074, 0078-0079). At the time the invention was made, one of ordinary skill in the art would have been motivated to reallocate a resource from a first customer to a second customer and making the resource unavailable in order to prevent the first customer from accessing the resource, thus decreasing the resource sharing conflicts.

Regarding claim 2, Dietrich teaches the method of resource allocation as recited in claim 1, wherein resource allocation is done to maximize a benefit (abstract; col. 2, lines 17-34).

Regarding claim 3, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the benefit is a tangible benefit (col. 2, lines 38-58).

Regarding claim 4, Dietrich teaches the method of resource allocation as recited in claim 3, wherein the tangible benefit is a profit and resource allocation is done to maximize the profit (col. 2, lines 38-58).

Regarding claim 5, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the benefit is an intangible benefit (col. 2, lines 38-58).

Regarding claim 6, Dietrich teaches the method of resource allocation as recited in claim 5, wherein the intangible benefit is customer satisfaction and resource allocation is done to maximize customer satisfaction (col. 2, lines 38-58).

Regarding claim 7, Dietrich teaches the method of resource allocation as recited in claim 1, wherein the resource is computer cycles and resource allocation is done to more efficiently solve computationally intensive problems (col. 4, lines 56-69).

Allowable Subject Matter

Claim 8 has been amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in the previous Office action. Therefore it is allowed over prior art of record.

Dependent claims 9-14 are allowed because they depend on allowed claim 8.

Applicant's argument in regards to the 112, 1st paragraph, rejection has been persuasive, therefore claim 15 is allowed.

Response to Arguments

Applicant's arguments, with respect to claims 5-7, 12-14 and 15 have been fully considered and are persuasive.

The declaration under 37 C.F.R. 1.131 of Tracy J. Kimbrel and Jayram S. Thathacha has been considered, however, it is not enough to overcome the O'Neill publication. Exhibit A (section 8: "Experiment results") does not teach "reallocating a resource from a first customer to a second customer making that resource unavailable to the first customer during a time interval that the resource is allocated to the second customer" as claimed by the invention. As stated above, this feature is taught in the Dietrich-O'Neill combination. Because Applicant did not present any argument as to why the cited references fail to teach the claimed feature, the PTO hereby sustains the rejections of claims 1-7.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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